

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on January 20, 2010, and the references cited therewith.

Claims 1, 6-7, 10, 16, and 20 are amended, claims 4, 17-18, and 21-46 are canceled, and no claims are added; as a result, claims 1-3, 5-16, and 19-20 are now pending in this application.

Examiner's Interview Summary

Applicant and Examiner Mashak conducted a telephone interview on February 16, 2010, to discuss claim language and proposed amendment thereof. Applicant endeavored to clarify the meaning of the elements recited in the claims of the present application and how the added claim language further distinguished same from teachings of the cited references. The Examiner appeared to agree that the amended claim language "advanced prosecution." However, no agreement was reached as to whether the claims as amended would be allowable over the cited references or additional references found with further search. Applicant thanks the Examiner for his time and consideration.

§103 Rejection of the Claims

Claims 1-3, 5-9, 16, and 19-20 were rejected under 35 USC § 103(a) as being allegedly unpatentable over Strecker (U.S. Patent No. 6,416,522) in view of Hlavka, et al. (U.S. Publication No. 2004/0172046) and Moss (U.S. Patent No. 5,085,661). Applicant respectfully traverses the rejection as follows.

Applicant's independent claim 1, as currently amended, presently recited in part:

wherein a first delivery member and an adjacent second delivery member each has a longitudinal slot communicating with an exterior of the delivery member and extending a length of the delivery channel, wherein a first fixation component resides in the delivery channel of the first delivery member and a second fixation

component resides in the delivery channel of the adjacent second delivery member, wherein a tether connects the first and second fixation members and passes through the longitudinal slots of the delivery members;

* * *

wherein a length of the tether that connects the first and second fixation members remains within a lumen of the vascular graft when the delivery members are in the radially expanded deployment position and the first and second fixation members penetrate a wall of the body cavity.

Applicant notes that section 4 of the Office Action mailed January 20, 2010, states that the Strecker reference does not teach a first fixation member, a second fixation member, and a tether connecting the first and second fixation members. In addition, the Office Action states that the Strecker reference does not teach the delivery members having a longitudinal slot communicating with an exterior of the delivery member and extending along the length of the delivery member, where the tether passes through the longitudinal slot of the delivery members.

However, the Office Action states that the Hlavka reference and the Moss reference in combination teach such elements. Applicant notes that the Hlavka reference appears to teach, “performing catheter-based annuloplasty using local plications”. (Title). Annuloplasty is defined as, “surgical reconstruction of an incompetent cardiac valve.” (The American Heritage® Medical Dictionary, © 2004, 2007 by Houghton Mifflin Company). Plication is defined as, “Surgery the act or process of suturing together the walls of a hollow organ or part to reduce its size.” (Collins English Dictionary – Complete and Unabridged 6th Edition 2003. © William Collins Sons & Co. Ltd 1979, 1986 © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003).

In contrast, Applicant notes that the Strecker reference appears to teach, “an implantation device for treating damaged or diseased tissue in the region of the inner walls of hollow organs”. (Col. 1, lines 3-5). Similarly, Applicant notes that the Moss reference appears to teach, a “surgical fastener implantation device” (Title)

that “is used to implant and release a surgical anchor that is primarily used to secure a hollow organ to an outer tissue layer.” (Col. 1, lines 6-8).

As such, Applicant respectfully submits that the surgical reconstruction of an incompetent cardiac valve by suturing together the walls to reduce its size, as taught by the Hlavka reference, is in a different field of expertise from use of an implantation device in the context of hollow organs, as taught by the Strecker and Moss references. As such, Applicant respectfully submits that there is no motivation to combine the teachings of the Hlavka reference with the teachings of the Strecker and Moss references and that doing so relies upon hindsight.

Nonetheless, while Applicant does not admit the Strecker, Hlavka, and Moss references are usable together, nor that they in combination teach the elements as previously presented, Applicant has amended independent claim 1 to more clearly recite the patentable subject matter of the present disclosure.

Hence, Applicant respectfully submits that the Strecker, Hlavka, and Moss references, individually or in combination, do not teach, suggest, or render obvious where a first delivery member and an adjacent second delivery member each has a longitudinal slot communicating with an exterior of the delivery member and extending a length of the delivery channel, where a first fixation component resides in the delivery channel of the first delivery member and a second fixation component resides in the delivery channel of the adjacent second delivery member, where a tether connects the first and second fixation members and passes through the longitudinal slots of the delivery members, and where a length of the tether that connects the first and second fixation members remains within a lumen of the vascular graft when the delivery members are in the radially expanded deployment position and the first and second fixation members penetrate a wall of the body cavity.

Applicant respectfully submits that the claim language added to independent claim 1 is fully supported in the specification of the present application as originally submitted. Such support can be found, for example, at: page 10, line 23, through page 11, line 21; and Figures 9A-9C; among other locations.

In addition, Applicant's independent claim 16, as currently amended, presently recited in part:

wherein a first fixation component resides in the delivery channel of the first delivery member and a second fixation component resides in the delivery channel of the adjacent second delivery member, wherein the fixation components comprise a pair of piercing members tethered together by a tether, wherein the tether passes through the longitudinal slots of the delivery members;

* * *

wherein a length of the tether that tethers the pair of piercing members remains within a lumen of the vascular graft when the delivery members are in the radially expanded deployment position and the pair of piercing members penetrate a wall of the body cavity.

As such, Applicant respectfully submits that the Strecker, Hlavka, and Moss references, individually or in combination, do not teach, suggest, or render obvious each and every element and limitation of Applicant's independent claims 1 and 16, as currently amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103 rejection of Applicant's independent claims 1 and 16, as currently amended, as well as those claims that depend therefrom.

Claims 10-15 were rejected under 35 USC § 103(a) as being allegedly unpatentable over Strecker (U.S. Patent No. 6,416,522) in view of Miller (WO Publication No. 02/17797), Hlavka, et al. (U.S. Publication No. 2004/0172046), and Moss (U.S. Patent No. 5,085,661). Applicant respectfully traverses the rejection as follows.

Applicant respectfully submits that the teachings of the Miller reference do not cure the deficiencies of the Strecker, Hlavka, and Moss references with regard to independent claim 10, as currently amended. That is, Applicant respectfully submits that the Strecker, Miller, Hlavka, and Moss references, individually or in combination, do not teach suggest, or render obvious:

wherein a first delivery member and an adjacent second delivery member each has a longitudinal slot communicating with an exterior of the delivery member and extending a length of the delivery channel, wherein a first fixation component resides in the

delivery channel of the first delivery member and a second fixation component resides in the delivery channel of the adjacent second delivery member, wherein a tether connects the first and second fixation members and passes through the longitudinal slots of the delivery members;

* * *

wherein a length of the tether that connects the first and second fixation members remains within a lumen of the vascular graft when the delivery members are in the radially expanded deployment position and the first and second fixation members penetrate a wall of the body cavity.

as recited in part by Applicant's independent claim 10, as currently amended.

As such, Applicant respectfully submits that the Strecker, Miller, Hlavka, and Moss references, individually or in combination, do not teach suggest, or render obvious each and every element and limitation of independent claim 10, as currently amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103 rejection of independent claim 10, as currently amended, as well as those claims that depend therefrom.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's below listed attorney at (612) 236-0126 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 CFR §1.8: The undersigned hereby certifies that this correspondence is being filed electronically with the U.S. Patent and Trademark Office on this 26 day of February, 2010.

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Feb. 26, 2010